

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

OLAF ARMAND NORDMANN,)	
)	
Plaintiff)	
)	
v.)	Civil No. 00-0038-P
)	
CUMBERLAND COUNTY JAIL,)	
et al.,)	
)	
Defendant)	

RECOMMENDED DECISION

Plaintiff has filed an action alleging excessive use of force by a correctional officer at the Cumberland County Jail, and has been granted leave to proceed in forma pauperis. Plaintiff's "Supplementary Document and Evidence of Which to Support Complaint" is hereby construed as an Amended Complaint. The Amended Complaint reveals that Plaintiff complains against Defendant John F. Fallon for excessive force and violation of his right to privacy, and against Defendant Michael Vitiello for placing Plaintiff in Defendant Fallon's path knowing that a physical altercation would likely result. The other Defendants, officers of the Cumberland County Sheriff's Department, are named in a separate section of Plaintiff's Amended Complaint identified as "claims for relief." The paragraphs in this section each state that certain general conduct by these Defendants amount to various constitutional violations. The allegations are conclusory, and assert no specific facts amounting to a violation of Plaintiff's constitutional rights. For example, in paragraph 28 Plaintiff asserts:

Defendant Newton's actions of deliberate indifference of infliction of harm potential as is tantamount to a knowing willingness that it will occur. Reckless disregard of the consequences as affecting the life, property of another. Placing responsibility upon another deliberately. Against Plaintiff's rights under the eighth

and fourteenth amendments of the United States Constitution. Actions of retaliation towards Plaintiff keeping Plaintiff from pre-release center and working even when policies and procedures not followed. Denying rights.

Amended Comp. at p. 10.

At best, these allegations could be construed as an attempt to impose liability upon these Defendants by virtue of their responsibility for various functions within the Cumberland County Jail. However, there is no *respondeat superior* liability under section 1983. *Monell v. Department of Soc. Serv.*, 436 U.S. 658, 691 (1978). “Liability in damages can only be imposed upon officials who were involved personally in the deprivation of constitutional rights.” *Ramirez v. Colon*, 21 F. Supp. 2d 96, 98 (D.P.R. 1997) (citing *Pinto v. Nettleship*, 737 F.2d 130, 132 (1st Cir. 1984)). Plaintiff has alleged that only Defendants Fallon and Vitiello were personally involved in the incident giving rise to this Complaint.

In some cases, Plaintiff specifically alleges only negligence on the part of these officials. For example, as to the Sheriff, Plaintiff asserts:

Defendant Dion’s actions of “estoppel by negligence” by believing others and not conducting own investigation. Delays of grievance procedures. Neglecting severity of issues. All violate eighth and fourteenth amendments of the constitution [sic] of the United States.

Amended Comp. at ¶ 29, p. 10. In addition, Plaintiff alleges that Defendant Pike exhibited “gross negligence” by “rubber stamping d-board decisions.” Amended Comp. at ¶ 27, p. 10. However, Section 1983 cannot be used to sue correctional officials for negligence. *Daniels v. Williams*, 474 U.S. 327 (1986).

Finally, Plaintiff's original Complaint named the Cumberland County Jail, and the Amended Complaint names the Cumberland County Sheriff's Department as Defendants. These entities are not persons within the meaning of 42 U.S.C. section 1983. *See Will v. Michigan Dept. of State Police*, 491 U.S. 58 (1989) (finding the same for the State Police).

Conclusion

For the foregoing reasons, I hereby recommend Plaintiff's Amended Complaint be DISMISSED pursuant to 28 U.S.C. section 1915(e)(2)(B) for his failure to state a claim upon which relief may be granted as to all Defendants EXCEPT Defendants Fallon and Vitiello.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Margaret J. Kravchuk
United States Magistrate Judge

Dated on: March 28, 2000

U.S. District Court
District of Maine (Portland)

CIVIL DOCKET FOR CASE #: 00-CV-38

NORDMANN v. CUMBERLAND COUNTY JA, et al
Assigned to: JUDGE D. BROCK HORNBY
Demand: \$0,000

Filed: 01/27/00

Nature of Suit: 555

Lead Docket: None
Dkt# in other court: None

Jurisdiction: Federal Question

Cause: 42:1983 Prisoner Civil Rights

OLAF ARMAND NORDMANN
 plaintiff

OLAF ARMAND NORDMANN
[COR LD NTC pse] [PRO SE]
YORK COUNTY JAIL
RR 1 BOX 64
ALFRED, ME 04002

v.

CUMBERLAND COUNTY JAIL
 defendant

CORRECTIONS, ME DEPT
 defendant

FRANCINE BRETON, Individually
and in her capacity as Captain
at Cumberland County Sheriff's
Dept
 defendant

CUMBERLAND COUNTY SHERIFF'S
DEPARTMENT
 defendant

MARK N DION, Individually and
in his capacity as Sheriff of
Cumberland County
 defendant

JEFFERY NEWTON, Individually
and in his capacity as Major
with Cumberland County
Sheriff's Department
 defendant

WAYNE PIKE, Individually and
in his capacity as Captain at
Cumberland County Sheriff's
Department
 defendant

RICHARD J GAGLIANO,
Individually and in his
capacity as Chief Deputy at
the Cumberland County
Sheriff's Department
 defendant

MICHAEL VITIELLO, Individually

and in his capacity as
Lieutenant at the Cumberland
County Sheriff's Department
defendant

JOHN E FALLON, Individually
and in his capacity as
Corrections Officer at the
Cumberland County Sheriff's
Department
defendant